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Paper No. 15

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**DIRECTOR OFFICE
TECHNOLOGY CENTER 2100**

In re Application of: Chandran, et al.)
Application No.: 09/276,917)
Filed: March 26, 1999) **DECISION ON PETITION TO**
Attorney Docket No.: CISC100/1156) **ACCEPT CORRESPONDENCE AS**
For: NETWORK TRAFFIC SHAPING) **TIMELY FILED UNDER 37 CFR §1.8**
USING TIME-BASED QUEUES)
)

This is a decision on the request filed October 14, 2003 to have correspondence deemed to have been timely filed. The request is being considered as a petition to withdraw the holding of abandonment under 37 CFR § 1.8(b).

A non-final Office action was mailed January 28, 2003 (Paper No. 13). Although a Notice of Abandonment has not yet been mailed, there is no record of a proper response to the January 28, 2003 action prior to petitioners' submission of October 14, 2003.

In considering petitioners' submission under 37 CFR § 1.8(b), the correspondence will be considered timely filed if petitioners meet at least three conditions:

1. Informs the Office of the previous mailing or transmission of the correspondence **promptly** after becoming aware that the Office has no evidence of receipt of the correspondence [emphasis added.];
2. Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
3. Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The Petition, includes a copy of the previously mailed correspondence and certificate as well as a statement by Leslie Russell that attests on a personal knowledge basis to the previous timely mailing (items 2 and 3 above).

However, the petition fails to provide evidence that the Office was notified **promptly** after the petitioners became aware that the Office had no evidence of receipt of the correspondence (item 1 above) (37 CFR 1.8(b)(1)). The practitioner states, "It was discovered by a routine status check by the Examiner that a response to his office action dated January 28, 2003 had not been responded to." Practitioner's statement and request omits the actual date(s) of discovery that the amendment and transmittal letter were not received by the USPTO, and must be provided in order for the petition to be granted.

The petition is **DISMISSED**.

If petitioners desire further review of this decision, petitioners should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Telephone inquiries should be directed to the undersigned at 703-308-0885.

 6/24/04

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security

BLJ: 6/23/04